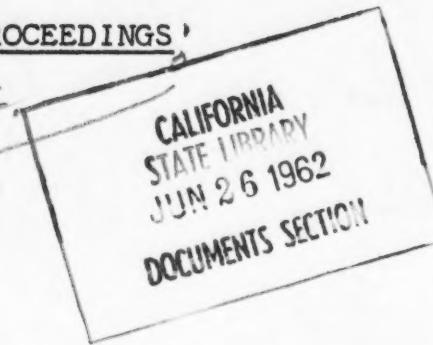


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TRANSCRIPT OF PROCEEDINGS

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ASSEMBLY INTERIM COMMITTEE ON LIVESTOCK AND DAIRIES
AND

SENATE FACT FINDING COMMITTEE ON AGRICULTURE

Room 4202
State Capitol
Sacramento, California
September 4, 1959.
10 A.M.

FRANK P. BELOTTI, CHAIRMAN

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ASSEMBLY INTERIM COMMITTEE ON LIVESTOCK AND DAIRIES
AND
SENATE FACT FINDING COMMITTEE ON AGRICULTURE

Room 4202 State Capitol
Sacramento, California
September 4, 1959 - 10:00 A.M.

ATTENDANCE:

Assemblymen Frank P. Belotti, Chmn.	Senators Paul L. Byrne, Chmn.
Leverette D. House, V. Chmn.	J. W. Beard, V. Chmn.
Carl A. Britschgi	James A. Cobey
Richard H. McCollister	Nathan F. Coombs
Alan G. Pattee	Alan A. Erhard
Carley V. Porter	R. I. Montgomery
Charles H. Wilson	

CHAIRMAN BELOTTI: (After introduction of members and Edsel W. Hawes, Deputy Legislative Counsel.) We are certainly pleased and honored to have the members of the Senate Agriculture Committee meeting here with us. We have no specially prepared agenda, because, as most of you know from the publicity that has been issued from the committee office the agenda was to be confined to receiving a summary and the explanations of the Department of Agriculture's interpretation and application of the Milk Control Act based on recent court decisions affecting plant dock pricings. We are hopeful that we can conclude this meeting before noon. If there are any questions on the part of any members of the committee, or anyone here from either the Senate or Assembly, he should feel free to interject or interrupt at any time during the course of the proceedings. I will now ask Mr. Dick from the Department of Agriculture if he has anything to offer, or anyone representing the Department to make whatever presentation he may have.

MR. DICK: Thank you, Mr. Chairman. Charley Dick, Department of Agriculture. We have asked Mr. Weinland, Chief of our Bureau of Milk

Control to present the statement in behalf of the Department in answer to the request of the Committee. So, with your permission, we would like to have Mr. Weinland --

CHAIRMAN BELOTTI: Very well.

MR. WEINLAND: Mr. Chairman and members of the Committee. I am D. A. Weinland, Chief of the Bureau of Milk Control for the State Department of Agriculture. We have prepared this statement with the hope it will help bring an understanding of the Department's position and interpretations in this dock pricing matter. With regard to the origin of dock pricing: "Dock pricing first appeared in minimum wholesale and minimum retail price schedules in California approximately 19 years ago, in 1940. This was approximately 2½ to 3 years after the enactment of the Desmond Act by the Legislature in 1937. When the differentials for dock sales were first instituted in 1940, such sales were considered to be a modification of the retail store sale based upon a saving in delivery cost. From this beginning and continuing up to the present time, dock sales are considered to fall within the category of retail store sales until such time as a differential is established in the minimum resale price order for the marketing area, although one recent court case does indicate that no minimum price will be in effect for an area in the absence of specific coverage for dock sales in the resale price order."

At this point it might be well to mention the original standards in the act when this dock pricing started.

"ORIGINAL STANDARDS OF THE ACT AND DEPARTMENTAL INTERPRETATION AT THE TIME DOCK PRICING ORIGINATED."

"The standards for the establishment of minimum wholesale and minimum retail prices are now contained in Section 4360 of the Agricultural Code. Previously, these standards were provided in Section 736.12. The original standards required that consideration

be given to several economic factors, including costs, and authorized the establishment of prices according to the method or type of distribution commonly used by consumers, and with the finding by the Director that such prices would not be more than reasonably sufficient to cover necessary costs according to the method or type of distribution.

"At that time, the legal basis for a dock price differential from the retail store price was simply that this represented a modification of the cost of handling milk through retail grocery stores based upon the fact that no delivery costs were incurred. Thus, in the beginning, dock sales fell within the category of retail store sales until such time as a differential price was established in a marketing area, and were not considered a distinct and separate method of distribution. It should be kept in mind that at that time there were no drive-in stores such as we have now. Dock sales were made only at the few processing plants in the State which were equipped to make retail sales. Flash pasteurizers were not yet available so that pasteurization was confined to the processing plants. Grade A raw milk was being sold at dairy ranches and on routes. Thus, dock sales were of minor importance in the early years of the milk law.

"During the period, 1940 to 1952, the following areas obtained dock price differentials:

Sacramento Marketing Area:

On January 1, 1940, a dock differential of 1 cent per gallon. This differential was dropped on December 1, 1942.

San Bernardino-Riverside Marketing Area:

On June 1, 1940, a differential of 1 cent per quart below wholesale. Eliminated in 1943. In 1948, the differential was reinstated at 1 cent per quart.

San Diego County Marketing Area:

On July 16, 1940, a differential of 1 cent per quart.

Imperial County Marketing Area:

January 1, 1942, a differential of 1 cent per quart.

San Joaquin County Marketing Area:

On April 19, 1942, a differential of 1 cent per half-gallon. This differential was dropped in 1946."

ASSEMBLYMAN WILSON: What does it mean when you say that a differential is dropped? Does that mean that there isn't supposed to be any more differential in that area then?

MR. WEINLAND: Not necessarily. But the one that was in effect at that time was eliminated from the price plan.

ASSEMBLYMAN WILSON: Now, coming up here the other day, I noticed in Turlock a great big building in the middle of town -- Wadler's cash and carry deal. He says up to 29¢ a gallon off. Now how in the world can a person advertise in big neon sign up to 29¢ per gallon off the regular price? Is he doing that?

MR. WEINLAND: We have a law suit in the Redwood Marketing Area with regard --

ASSEMBLYMAN WILSON: This was in San Joaquin County, no, Stanislaus County.

MR. WEINLAND: We have some litigation pending down there. But that is in connection with a retail store, and is not a dock price. That is involved in that refund on the bottle dispute. I have seen the sign myself, and I'm not sure what the 29¢ is off of, and whether it applies to milk or just what it means.

CHAIRMAN BELOTTI: Well along that line, Mr. Weinland, does that mean that the legislation that we approved here at the last session takes care of that situation now? Insofar as the refund on the bottle?

MR. WEINLAND: That is my understanding that it does take care of that, and that legislation goes into effect this month. Mr. Wadler has indicated that he is going to challenge that piece of legislation in the courts, however.

ASSEMBLYMAN PATTEE: When you say here that the differential was dropped. Is that the way it exists in 1959 too?

MR. WEINLAND: No, not necessarily so. In some of these areas they were reinstated at a later time.

"Lassen-Plumas-Sierra Marketing Area:

On May 27, 1942, a differential of 1/2 cent per quart with the purchase of 4 or more quarts. Dropped in 1946.

Butte-Glenn Marketing Area:

May 29, 1942, a differential of 1/2 cent per quart. This differential was dropped March 17, 1943.

Tulare County Marketing Area:

June 28, 1942, a differential of 1 cent per quart below the retail store carry-out price was established."

MR. WEINLAND: To make it absolutely clear, these differentials I mentioned are prices in that amount before the retail store price.

"San Luis Obispo Marketing Area:

A dock price of 6 cents per gallon above the wholesale price, which was equivalent to 2 cents per gallon below the retail store price."

MR. WEINLAND: I'm sorry, I noticed the mimeographing of this has eliminated the date and I have forgotten it for the moment.

"Santa Barbara Marketing Area:

February 24, 1948. A differential of 6 cents per gallon above wholesale established.

MR. WEINLAND: I think that one also was equivalent to 2¢ per gallon below the retail store price.

"Los Angeles County Marketing Area:

On November 1, 1948, a differential of 1 cent per quart.

Orange County Marketing Area:

On April 1, 1949, a differential of 1 cent per quart.

Ventura County Marketing Area:

April 1, 1949, a differential of 1 cent per quart.

MR. WEINLAND: Now in certain areas in later years, particularly in Northern California, some of these differential were reinstated.

"REINSTATEMENT OF DOCK PRICING DIFFERENTIAL IN NORTHERN CALIFORNIA

"As indicated above, dock pricing differential had been esta-

blished in several Northern California marketing areas along with other marketing areas during the early years of the Milk Law. However, some time prior to 1952, all of these differentials had disappeared from the marketing areas north of Tulare County primarily because of lack of interest in this method of sale.

"The dock sale differential price does not appear to have been a controversial issue in milk pricing until 1952 when a differential was established in the San Joaquin County Marketing Area.

"In 1952, the issue was raised in the San Joaquin County Marketing Area and from that time on has developed into an extremely controversial issue in the milk industry. On October 1, 1952, following a public hearing held on September 12, 1952, a dock sales differential of 1 cent per quart below the retail store carry-out price was established in this area. The differential was established on the basis of an existing dock sales method in the area and an indication of cost savings below the store price. On April 8, 1953, the differential was increased from 1 cent per quart to 2 cents per quart. This was the first time any dock sale differential exceeded 1 cent per quart on quart units, except for the 1940 differential in the San Bernardino-Riverside Area.

"Following this action, a 1 cent differential was established in Kings County in June of 1953, a 2 cent differential was established in the Sacramento Marketing Area on August 15, 1953, and in the Fresno Marketing Area on January 1, 1954. In the Alameda-Contra Costa Marketing Area a differential of 1-1/2 cents per quart was established on February 9, 1956."

MR. WEINLAND: At this point there was a legislative change in the standards of the act for resale pricing which has had some bearing on this issue with regard to all resale pricings.

"LEGISLATIVE CHANGES.

"At the 1955 Session of the Legislature, there were two changes in the standards for resale pricing (Section 4360 of the Agricultural Code) which affected this situation. These two changes are as follows:

- "1. The reference to the establishment of prices for the methods of distribution commonly used by consumers was eliminated. Substituted therefor was the directive for the establishment of minimum prices according to the method of distribution.
- "2. The other important change was that greater emphasis was placed on distribution costs as the basis for wholesale or retail prices with authorization to the Director to deviate from costs if certain findings are made on the basis of credible evidence.

"This brings us down to the so-called MISASI CASE in 1956. On August 10, 1956, an action was brought against the Director of Agriculture and dock operators in the San Joaquin County Marketing Area in connection with the 2 cent differential price previously established in that Marketing Area on April 8, 1953. After this case was filed, no additional dock differentials were established in other areas until after this case was decided in the Superior Court on June 30, 1958. This action, which is known as the Misasi Case, was brought by a group of grocers in the San Joaquin Area, naming the Director of Agriculture as defendant along with all of the dock sales establishments in the Marketing Area. The complaint was for declaratory relief, writ of mandamus and injunction, all in connection with the dock sales differential. The plaintiffs asked the court to void the dock differential provisions of the order, to compel the Director to cancel the dock differential provision, and to enjoin the dock operator defendants from selling milk at a lower price than the retail store price. The complaint alleged the two methods of opera-

tion are the same mode of distribution of milk and that the difference in prices is discriminatory. The return and answer filed by the Department and other defendants asserted the validity of the proceedings leading up to the adoption of the differential and denied the allegations of discrimination.

"The Superior Court decided the case in favor of the Director and the other defendants, and determined that in the San Joaquin Marketing Area, dock sales constituted a separate method of distribution different from the retail store method. The differential price based on indicated cost savings was upheld. This case has been appealed by the plaintiff grocers. The appellants' opening brief has been filed, the department respondents' brief has been filed, the industry respondents' briefs are due September 17, 1959, and the appellant grocers have until October 7, 1959, to file their reply brief.

"In view of the Superior Court decision in the Misasi case, the Department at the present time must consider dock pricing as a recognized method of distribution separate and distinct from the method of handling milk through retail stores.

"DEPARTMENT ACTIONS ON RECENT APPLICATIONS FOR DOCK SALES DIFFERENTIALS.

"Following the Misasi case and in accordance with the Superior Court decision in this case and the standards in Section 4360 of the Agricultural Code, hearings have been held on applications for dock differentials in four marketing areas. These are as follows:

"Sutter-Yuha Marketing Area. In this area, a dock differential was denied on the basis that at the time of the hearing, cost data did not show that an adequate basis for a differential existed.

"Stanislaus County Marketing Area. On January 1, 1959, a dock sales differential of 1 cent per quart was established for this area.

"Napa-Sonoma Marketing Area. On March 8, 1959, a dock sales differential was established at 1 cent per quart below the retail store carry-out price.

"Butte-Glenn Marketing Area. On May 1, 1959, a differential of 1 cent per quart below the minimum retail store carry-out price was established.

"WENDEL FARMS CASE.

"In the Napa-Sonoma Marketing Area, the matter of dock pricing had not been specifically covered in the retail milk price order. About October 1958, a new drive-in dock sales plant commenced operation in the Napa-Sonoma Area, selling milk below the retail store carry-out price. On October 29, 1958, the Department filed an action against Wendel Farms, Inc., in the Superior Court in Sonoma County to enjoin the sale of milk below the store carry-out price. The Department's position at that time was that such sales were retail store sales until such time as dock prices had been established. However, on the basis of the Misasi case, the Superior Court ruled that, since dock sales were a distinct method of distribution, no minimum prices were in effect for dock sales for the Napa-Sonoma Marketing Area. An appeal has been taken by the Director from this judgment and preparation of the reporter's transcript and clerk's transcript has been requested. As of this date, the record has not been filed with the Appellate Court. In line with this decision, the Department has continued its policy of filling the gap in the price schedules in those areas where the dock sales method of distribution has not yet become a significant method and where no request for a differential was before the Department by dock sales operators actually doing business in the marketing area. In accordance with this policy, dock sales were specifically covered

in price orders at the same levels as retail store prices in the following areas:

1. Madera-Merced Marketing Area, February 8, 1958.
2. Marin County Marketing Area, March 1, 1958.
3. Kern County Marketing Area, May 16, 1958.
4. Shasta-Tehama Marketing Area, September 8, 1958.
5. Fresno Marketing Area, January 11, 1959.
6. Golden Chain Marketing Area, February 16, 1959.
7. Mendocino-Lake Zone, Redwood Marketing Area, April 1, 1959.
8. Siskiyou County Marketing Area in April 1959.
9. San Francisco, Santa Clara and Monterey-Santa Cruz, in June 1959.

"PRESENT INTERPRETATION OF LAW AND POLICY IN ESTABLISHING DOCK PRICES."

"1. In view of the Misasi case decision, the Department must consider dock pricing as a method of distribution separate and distinct from the method of handling milk through retail stores.

"2. When such method becomes of significant importance within a marketing area, it warrants consideration and the establishment of a specific price based upon cost data obtained from such operations in the marketing area.

"3. In accordance with the provisions of Section 4360 (a) and (b), prices may be established above or below indicated costs based upon credible evidence if such modification from the indicated cost is determined to be necessary in the interest of stabilized marketing conditions in the marketing of fluid milk for the marketing area. The degree to which the Director of Agriculture may exercise this discretion to establish minimum prices above or below costs in the interests of stability is now before the courts in two cases. These cases are Voorhees v. Jacobsen, which was brought against the Director of Agriculture in the Stanislaus County Superior Court. This case is based upon the assertion that the f.o.b. plant differential of 1 cent per quart was arbitrary and discriminatory and that facts warrant a differential greater than 1 cent per quart. In this case, a pre-trial hearing has been called for September 21, 1959, and

at such hearing the issues will be determined and the date of the trial will be fixed. The other action is Wendel Farms, Inc. v. Jacobsen (the second Wendel Farms case), which was an action brought against the Director of Agriculture in the Sonoma County Superior Court. This action is similar to the Voorhees v. Jacobsen action and challenges the 1 cent differential which was established in that area. In this case, a demurrer by the Director was sustained and an amended petition has been filed and a return by way of answer was filed July 31, 1959, by the Director. This case will be tried and submitted for decision in the near future.

"4. Based upon the decision in the case of Jacobsen v. Wendel Farms, Inc. (the first Wendel Farms case), and to fill the gap in the pricing schedules where no mention is made of dock pricing and where no such operations are in business, it is the policy after public hearings to establish the minimum retail store carry-out price as the minimum dock price by specific coverage in the retail price orders until such time as the method becomes operative and cost data may be obtained.

"5. It is the opinion of the Department that if the decisions in the Misasi and Wendel Farms cases are upheld by the Appellate Courts, in order to maintain reasonable stability in the several areas, the Department will need to have clear-cut discretion in establishing the levels of dock prices in relation to retail store prices. Obviously, if dock prices are established at levels below retail store prices so wide as to cause serious loss of sales by retail stores and retail routes, the retail distribution situation will become unsettled and further difficulties will ensue. On the other hand, the establishment of dock prices at the same levels as retail stores when a substantial difference in costs exists would be

unrealistic and would be unfair to this method of distribution. On the basis of our experience, we believe that there is in most marketing areas, where dock sales are involved, an opportunity to establish a dock differential that would be reasonably equitable to both the dock sale operators and to the retail stores and home-delivery routes. The amount of this differential will vary somewhat in the different marketing areas depending upon the efficiency of dock and retail store operations and other factors. In order to establish a proper and reasonable dock price differential that will tend to maintain reasonable stability in retail milk distribution in each area, the Director of Agriculture will need to have clear-cut authority in the Milk Control Act to use his discretion in establishing differentials to meet the needs in each area.

"In examining the provisions of Section 4360, it is not entirely clear that the Director of Agriculture has adequate authority to establish minimum prices above or below costs on the basis or for the purpose of maintaining stability. This Section at the present time states that the Director of Agriculture may establish minimum prices above or below costs if he determines from credible evidence that prices based strictly upon costs will not conform to and affectuate the legislative declarations, purposes and intent of the chapter, and further finds:

"(a) That such minimum prices will tend to maintain in the business of distributing fluid milk and fluid cream, or both, such reasonably efficient retail stores and distributors of fluid milk and fluid cream, or both, in such marketing area as the director finds necessary to insure to consumers in such marketing area sufficient distribution facilities to supply the quantity of fluid milk or fluid cream, or both, required by such consumers without requiring such consumers to pay more for their supplies of such fluid milk, or fluid cream, or both, than is necessary to maintain adequate and efficient distribution facilities in such marketing area.

(b) That such minimum prices will not tend to induce or

authorize the development of unfair trade practices, unfair competition, conditions of monopoly or combinations in restraint of trade, and that such minimum prices will tend to encourage the orderly and efficient marketing of fluid milk or fluid cream, or both."

"We believe that Section 4360 could be made much clearer if it were amended to state specifically that one of the bases upon which the Director of Agriculture may establish minimum prices above or below costs would be that of maintaining reasonable stability in the distribution of milk in each marketing area."

MR. WEINLAND: Mr. Chairman, that concludes our statement. We will be happy to answer questions.

CHAIRMAN BELOTTI: Any questions now?

ASSEMBLYMAN PORTER: Mr. Weinland, you have listed on page 7, the bottom half, "in accordance with this policy, dock sales were specifically covered in price orders at the same levels as retail store prices in the following areas", and then you list some nine areas. The plant docks in these areas then sell at the retail store prices?

MR. WEINLAND: At the retail store prices.

ASSEMBLYMAN PORTER: And not below?

MR. WEINLAND: And not below.

ASSEMBLYMAN PORTER: Do you have the list of all of the areas in the State where they sell below the --- is that the one that starts on page 2?

MR. WEINLAND: Some of those differentials were deleted. Some were reinstated at a different amount, but not necessarily all of them. I think they are all covered in here, but I do have a separate list. I could supply you with copies, or I could recite them at the present time.

ASSEMBLYMAN PORTER: I do want to ask this question. On the

basis of the up-to-date list of the plant dock orders which your Department has granted at a differential less than the retail store prices, and on page 9, you say that the differential is granted in accordance or in relation to retail store prices. That's item 5 on page 9, the whole sentence reading: "It is the opinion of the Department that if the decisions in the Misasi and Wendel Farms cases are upheld by the Appellate Courts, in order to maintain reasonable stability in the several areas, the Department will need to have clear-cut discretion in establishing the levels of dock prices in relation to retail store prices." What do you mean by, "in relation to retail store prices"? By my question, I mean would you grant a price differential less than a retail store price to a plant dock operator if he were between two existing grocery stores?

MR. WEINLAND: I believe that under these cases we probably would if there was a clear-cut showing that his costs were lower. I would like to make it clear that we don't set a dock differential necessarily for a specific individual. It's for the marketing area, and it applies to anyone in the marketing area. Now if the costs in the area clearly show the differential under the Wendel Farms case, I mean under the Misasi case, I believe some recognition to that situation would have to be given.

ASSEMBLYMAN PORTER: Yes. So in relation to retail store prices, you mean that is the pegged price, and you would make your differential just below?

MR. WEINLAND: That is the way the differentials have been handled in all cases, but I think two, where I mentioned the differential price was written in the order as so much above the wholesale, which in effect, was one or two cents below the retail store carry-out price. But in all the plants but those two, where there is a differen-

tial provision, it says consumer sales at the processing plant shall be at the rate of one cent per quart or two cents per quart below the retail store carry-out price.

ASSEMBLYMAN PORTER: All right. Then, upon what basis could the Department refuse an applicant's order for a plant dock differential any place in the State?

MR. WEINLAND: There has to be a showing of a cost basis for a differential, and it must be of enough importance to be a recognized method in the area. The standards allow for the establishment of minimum prices according to the method of distribution. An occasional sale out of the plant is not considered a method of distribution.

ASSEMBLYMAN PORTER: All right. Suppose then that I own a dairy. What do you mean by my dairy must be, or the method of my selling milk must be of "enough importance"?

MR. WEINLAND: Well, we generally do that in the past.

ASSEMBLYMAN PORTER: If I put a sign up and say I will sell for four cents a quart less, I'll sell milk.

MR. WEINLAND: You will sell a lot of milk. That is correct, sir. But your costs may not justify that.

ASSEMBLYMAN PORTER: In my opinion, in your opinion, or in the Department's opinion?

MR. WEINLAND: The Department must make that determination under the standards of Section 4360.

ASSEMBLYMAN PORTER: How would you state your refusal to permit me to sell milk if I had a hundred cows and I wanted to sell milk at two cents, three cents, or four cents less than the grocery store a block away?

MR. WEINLAND: If your plant was right on your dairy farm, well, you would make an application, and if there were adequate sales to

obtain cost data, the costs would be gathered and then we would review the matter and it would be brought up at the next hearing in that area on resale pricing, or possibly a special hearing would be called for that issue alone.

ASSEMBLYMAN PORTER. I understand that that is the law 4360 -- when did we put that word "reasonably efficient" in? 55 or 57?

MR. WEINLAND: I think the "reasonably efficient" has been in prior to 55, but as stated in a different way and is one of the factors to be considered. Following the 55 amendment, the standard says the price shall be based upon the cost unless the Director, he may establish prices above or below cost, based on credible evidence if he determines that such prices are necessary to carry out the purposes and policies of the Act, and then he makes those further findings, which I read in detail.

ASSEMBLYMAN PORTER: Just one last question. I am still puzzling about how you can arrive at a decision to refuse a dairyman an opportunity to sell milk at a plant dock location if he can sell it and wants to sell it less than the retail grocery price and can still stay in business if he wants to operate on a smaller margin of profit than someone else. Does the Department decide what the margin of profit should be?

MR. WEINLAND: On the basis of the cost data, an allowance is made for a profit margin.

ASSEMBLYMAN PORTER. I see. O.K.

ASSEMBLYMAN MCCOLLISTER: Well, Mr. Chairman, going back to the theory of the Act, it would occur to me that ideally you would take a man's figures and prices and build up from there to determine his dock price.

MR. WEINLAND: That is correct.

ASSEMBLYMAN McCOLLISTER: Yes, that is correct theoretically.

When you and I started in this situation, it would be correct. But I am afraid the tendency now, instead of building up from his costs, you are building down from the established retail level. My question really is, in these areas where you have established a differential, is the accent on the differential from the retail price or have we followed the original purpose and built up from that man's dairy to his dock and discovered what price he should get at a retail level?

MR. WEINLAND: We have taken his costs, of course, but the way the price has been stated in the plan is so much off of the retail store price. That eliminates a complete restatement of another schedule of prices and is one of the reasons for it.

ASSEMBLYMAN McCOLLISTER: So, the question is actually what are you doing in the Bureau to find the dock price. Are you building up from his costs? Are you coming up directly from his costs, his individual operation, or are you examining his situation to say well, he's making a few savings, he doesn't have this operation, so he can be a couple of cents less. Is that the attitude, or are we really building up from what his original costs are?

MR. WEINLAND: We endeavor to obtain his costs. We have done that in these areas where these differentials have been stated recently. As I indicated, also, these differentials have been less than the cost data indicated, and it has been established on that basis under what we think is our authority in the interest of stability in the area. However, on that point, while we think we have that authority, or the Director has that authority, it is not crystal clear that strictly in the interest of stability what this deviation of above cost, or below cost may be made.

ASSEMBLYMAN McCOLLISTER: Because if you follow the theory and

build his costs up from his operation, as in the case of a plant dock sandwiched in between two large grocery stores, you might have four cents for all you know, and you couldn't refuse if that was the attitude. I am concluding, sir, that the Bureau is actually working down from the retail level more than they are working up from what an individual's plant dock price could be.

MR. WEINLAND: It's a little bit difficult to answer that question specifically. We do view the man's cost and the retail store price with their cost.

ASSEMBLYMAN McCOLLISTER: I have one other factor. If you're actually looking at the individual's plant dock cost, yes or no, does the sale of other articles, such as bread, have any bearing on your computation?

MR. WEINLAND: On our arrival of costs? I would have to ask the cost auditors. I assume that the people who are employed in retailing that some of the cost is allocated to the handling of other items other than milk. I am certain it is.

ASSEMBLYMAN McCOLLISTER: You are certain it is included in your figures? The profits from the handling of other articles? I don't think it should be.

MR. WEINLAND: No, no, you misunderstand me, Mr. McCollister. My statement was that I think in arriving at the cost, the cost of employees and costs attributable to other items, I don't think are included in the milk costs. They shouldn't be.

ASSEMBLYMAN McCOLLISTER: No, they shouldn't be, but I think that might become a very hot matter here in this field, because if the handling of shoe laces and bread and other stuff is going to pay the rent, and pay the cost of the help so that when you are figuring your milk cost, you are not charging any clerks' salaries or anything with

reference to that outlet. I think the Committees, both of us, would want to know, and want to be sure that in your computation of the differential, as we call it, that you are not considering the profits or the benefits of handling other commodities, because I think one side of this question, and one segment of the industry at least, would seek to have the Legislature prohibit the handling of other things other than dairy products.

MR. WEINLAND: Well, the handling of other items would tend to help carry some of the overhead cost and minimize the cost on milk.

ASSEMBLYMAN McCOLLISTER: Well, I think you can get statements to that effect from some of the witnesses here that it does, and I think when they say they are treading on the toes of making themselves a retail outlet, such as a store. So whether your Bureau is using any of the costs of handling any of the other articles, I think the Committees would like to know.

MR. WEINLAND: We endeavor to determine the cost of handling milk, and any costs not attributable to milk are excluded.

ASSEMBLYMAN McCOLLISTER: That's the way it should be. So your answer at the moment is, no, you are not considering any profits from other articles?

MR. WEINLAND: To the best of our ability in those cost allocations, that's correct.

ASSEMBLYMAN McCOLLISTER: If you are not, then they could be eliminated from the picture and no injury done to the merchant, in your mind, with reference to the sale and price of milk?

MR. WEINLAND: With reference to determining the cost, that is correct.

ASSEMBLYMAN PATTEE: I was very interested on page 7 where you state that San Francisco, Santa Clara, Monterey and Santa Cruz had a dock price set which is the same as the retail stores. Now, I presume there is no dock plant there, is that right?

MR. WEINLAND: No, that is not correct, Mr. Pattee. There is one dock operation in the San Francisco area.

ASSEMBLYMAN PATTEE: Did he put in for a lowering price?

MR. WEINLAND: No, he did not.

ASSEMBLYMAN PATTEE: He did not put in? So you just said that this will be the price because he did not ask for a differential?

MR. WEINLAND: He is selling at the retail store price.

ASSEMBLYMAN PATTEE: Now, if someone does ask for a differential you will have to have a hearing, is that right?

MR. WEINLAND: I think we would have to consider the costs, and under the Misasi case we would be obligated to consider the matter.

ASSEMBLYMAN PATTEE: Under the Wendel Farms case this man could start right out and sell at four cents under, and if the Wendel Farms case holds up you couldn't do anything about it.

MR. WEINLAND: He couldn't under the Wendel Farms case, because we've covered the matter, and written in the plan that the retail store price applies to the dock operation.

ASSEMBLYMAN PATTEE: But that is what he is trying to throw out in court, isn't he?

MR. WEINLAND: Are you speaking of the first Wendel Farms case, or the second one?

ASSEMBLYMAN PATTEE: The second one.

MR. WEINLAND: In the second Wendel Farms case, we set a differential of one cent per quart below the retail store carry-out price. Costs indicated that it should have been set at two cents or possibly three cents below the retail store carry-out price. He is challenging the Director's authority and discretion in establishing the differential at one cent instead of two cents or possibly three cents. The first Wendel Farms case made no mention of dock operation, and from the beginning of the Act, the Department's interpretation was where there was no mention that this came under the definition of a retail store sale and was therefore regulated by the retail store price. The judge said, following the decision in the Misasi case, that since dock sales

are not specifically mentioned in this order, you have no minimum price. This man can sell at any price he sees fit.

ASSEMBLYMAN PATTEE: What would you do if somebody started to sell in there at five cents? The judge said that you had no authority over that?

MR. WEINLAND: Because the plan did not cover it. The plan now specifically covers it.

ASSEMBLYMAN PATTEE: What do you do if you do find when you have gone over all the records that somebody is three cents under? Do you allow them to go three cents under, or do you just arbitrarily say it will be one cent?

MR. WEINLAND: We hold the hearing on the basis of the testimony --

ASSEMBLYMAN PATTEE: Do you come up with a direct one cent cost? Because it seems to me you are always coming up with one cent. Now, what if somebody in an area comes in with a three cent differential, do you allow them to have that three cents, or do you say one cent?

MR. WEINLAND: In the Napa-Sonoma area and the Stanislaus area we went above cost under the authority of Section 4360. The price set is above the indicated cost.

ASSEMBLYMAN PATTEE: Well, as a rule then, it comes up about one cent, no matter what's handed in?

MR. WEINLAND: That has been the situation recently. It's not so in Oakland, Sacramento and San Joaquin. It's on the marketing area basis.

ASSEMBLYMAN McCOLLISTER: If that county is in a certain area and you have already set a dock price in that area. Somebody new coming in conforms to that marketing area price. The point of Mr. Pattee's question is that if a new fellow starts out he could conceivably have a three cent differential, but he doesn't get that privilege, he has

to conform to your price that is set for that marketing area in which he is doing business. Right?

MR. WEINLAND: That is correct. If it is specifically covered in the plan, and in practically all areas, I think there are three left now where there is no specific reference to dock sales in the price plan.

CHAIRMAN BELOTTI: On that point then, in other words you determine the costs and the price based on the cost in the entire area, not just on one or two? Put them all together and you get your one cent which is presumed to be the differential for the entire area?

ASSEMBLYMAN PATTEE: Say you have only one dairy going, and he is very, very efficient, and he can sell at three cents under, therefore they are going to have to base it on that one dairy. Then another man can come in and he's still going to get the three cents.

CHAIRMAN BELOTTI: Well, that one dairy, apparently the way it is being done, helps to bring the price down for all the others in proportion.

ASSEMBLYMAN PATTEE: What the Department is doing is just arbitrarily taking all these things and putting them in the trash can and saying one cent.

SENATOR COBEY: On this cost problem then, as I understand it, the cost that you are applying is a pool cost for that particular marketing area of the reasonably efficient distributors, is that it?

MR. WEINLAND: That is correct.

SENATOR COBEY: Now, generally speaking, at least I'll make the assumption that these dock plants will have a lower cost of distribution due to the fact that they don't make delivery to stores. There's one item of cost that's eliminated. Generally speaking, if he's a reasonably efficient operator, he's going to have a little lower cost of operation.

MR. WEINLAND: Generally speaking, if their costs are lower, that is correct.

SENATOR COBEY: As I understand the law, as you have stated it, in fixing prices you are given the express authority to deviate from the cost basis if it's necessary to maintain reasonable stability in the distribution of milk in that particular area.

MR. WEINLAND: That is our interpretation, but the language isn't quite that clear.

SENATOR COBEY: The stability that you are referring to in milk distribution in the area, is that stability in terms of the number of the milk distributors, or is that stability in price, or is it both?

MR. WEINLAND: Well, I would say it would have its effect on the personnel, but an extremely wide differential protected where the retail store cannot compete with it, or the man on the home delivery routes cannot compete with it, could result in unsettling marketing conditions. It could shift a lot of volume very rapidly from the stores on the retail routes to this other method and cause inefficiencies in those methods.

SENATOR COBEY: It would actually result in a big increase in this method of distribution at the cost of the other two methods.

MR. WEINLAND: That's correct.

SENATOR COBEY: As I see it the purpose of the language that you interpret in the manner that you have indicated is to sort of put a brake on that.

MR. WEINLAND: That's correct.

SENATOR COBEY: As I see it, let's put it this way, so far as below cost is concerned, if the general assumption is correct, in other words, you are not, in very many cases, going to be putting this dock price differential where it is going to be below the cost of the dock distributor.

MR. WEINLAND: There is only one area that I know of where his court costs at least were higher than the retail store price which gave him a price at the retail store price.

SENATOR COBEY: So normally the situation that you will be dealing with is where your cost data indicates that his costs are below the store and home delivery cost, and your question is whether the differential would thereby be established is so great that, so to speak, it would disrupt, upset in a very substantial degree, the balance between these methods of distribution.

MR. WEINLAND: That's correct.

SENATOR COBEY: Then, as I see it, the law gives you a pretty free hand to then make the adjustment from your cost figure to your price figure to achieve this end of maintaining, shall we say, a reasonable balance between the methods of distribution.

MR. WEINLAND. That is our interpretation.

ASSEMBLYMAN BRITSCHGI: It seems to me, Mr. Weinland, what we are trying to do here apparently is to protect the existing companies in operation at the present time. When you are talking about pricing, and you arbitrarily came along with nine districts or areas and gave them the one cent differential or the same as the store on the dock price. I know, from San Mateo County, and that area, it costs seven cents to deliver a quart of milk. I am just wondering how much longer we can continue to place a hardship on large families that want to buy milk cheaper when it can be bought cheaper. I think it's proven that. I just wonder how the Department can actually sit down and say they are talking about stability, and how far can the Legislature or the members of the Department of Agriculture justify stability against the consumers' right to buy something that could be sold at a lesser price just because you want to maintain a status quo, as you said here a moment ago, on existing companies. It just doesn't make sense

to me that we can continue on that kind of an operation. I think that the Department somewhere along the line has to justify this thing. I was caught in the middle of these union contracts year in and year out. We never could get any relief and you never can get it under the existing setup that you have today, because the Department would never grant an increase in price unless you could justify an increase in cost. You had to go back with figures, and as I recited to some of the members here, I well remember a union contract that went back retroactively from September. The Department said, "Well, you guys want to go give in to them, you pay it." Somewhere along the line here, I think the Department is missing the boat as far as the responsibility to the people, and the milk companies and all. This whole bubble, I'm afraid, is just going to break wide open, and Mr. Weinland, Jacobson and the rest of them are just not going to be around to find out what happens when this thing breaks high, wide and handsome. I don't mean to threaten you. That isn't the idea of the thing, but I think the people are going to get pretty much fed up on this kind of an operation. Apparently you are sent here to do a job, and I'm not criticizing you for that. But to say that you base everything here on stability, I just wonder where stability fits into this thing if you are going to continually charge the consumer something that they, in my opinion, have a right to get a little bit cheaper if they can.

MR. WEINLAND: Well, if I might comment on that Mr. Britschgi, I would like to point out, I don't believe it's the Department's intention necessarily to preserve the present methods of distribution as they now exist. I think this dock method, I'm speaking my personal views now, is growing, and will grow. But when we are in a situation of establishing prices we have to remember that we are putting a price

on the retail store where he cannot compete or he's in violation of the law. If he comes down part way to meet this dock situation, he's in violation of the law, and if that differential is too wide it will tend, through pricing, to force the growth of this method more rapid and beyond its natural growth. That is the problem that concerns us.

ASSEMBLYMAN BRITSCHGI: Let me ask you then, how could you justify your pricing situation where you changed, I guess it was two years ago, or four years, the pricing to where you said if the grocer takes X number of quarts of milk, and the amounts of dollars are high enough, he gets a percentage break on that. Actually what you did in that situation was to force the grocer to take all his milk from one company, because naturally he would get a larger discount. So the smaller companies went out the window on that thing. I think the Department, in that one particular case, is helping push the little guys out and force them right into this dock thing that you are trying to stop right at the moment. You have walked right into it as far as I can see. You did that to me when I was in business.

MR. WEINLAND: We were following the cost differences for varying quantities of delivery in our wholesale pricing.

ASSEMBLYMAN BRITSCHGI: Just for an example, take my own particular situation in San Mateo County when I was in business there, and I know that somebody is here from one of the large companies. Those two companies are combined into one, and they will handle, the same company will bottle, the same milk only in different cartons in the same operation delivered in different trucks. The grocer will buy milk from that same company under two different names and will probably get the discount on the one pricing. But if there are two milk companies in there, what chance would I have of getting into that store? You might just as well fold up. Therefore, I have to look for some other way to sell my milk. I'll be

darned if I'm going to sit still on that. In my opinion that's why you are in this position that you are today. Maybe I'm wrong, but I had to get out of it to save my neck.

SENATOR ERHART: Take San Luis Obispo County, for instance. They have plant docks and sell milk below the retail stores in these various docks. I don't know how many there are in San Luis Obispo County. In order to arrive at the price they sell below the grocery store. You had hearings and came to the conclusion that it was a cent or two below. I don't know which it is. There were probably a half a dozen or more operators involved. You arrived at this price by taking an average cost, I suppose, of these dairies?

MR. WEINLAND: No, not necessarily so.

SENATOR ERHART: Well, then, the price they can sell below the retail store price is the same throughout the county though, isn't it?

MR. WEINLAND: That is correct.

SENATOR ERHART: Regardless of whether some operator could have sold it for three cents less, and the other fellow for two cents less, you arrived at a uniform price throughout the county?

MR. WEINLAND: That is correct.

SENATOR ERHART: But you did have hearings on individual cases. Say there were six docks, and they were supplied by six different dairies or groups of dairymen. You did have individual hearings, and say that on one of them their price was such, their cost was such that they could have sold for three cents below the grocery store price, and another operation was one cent below, and so forth, and then you arrived at an average.

MR. WEINLAND: We set a price. It may not necessarily be a mathematical average.

SENATOR ERHART: And then the fellow who could have sold it for three cents less must abide by whatever the average was?

MR. WEINLAND: That is correct. Whatever price that was set, yes sir.

ASSEMBLYMAN WILSON: There is another differential there too. How do you determine on these ranches where cows are, where they actually have the livestock on the premises? They are entitled to a different differential, is that it?

MR. WEINLAND: I think in all of the areas, the initial plans provided for the differential price below the retail store price for the dairy farmer who processes and sells milk on the ranch.

ASSEMBLYMAN WILSON: I assume that has been given a lower price, or a greater differential?

MR. WEINLAND: I think in most areas that is the case. Here in Sacramento they are both two cents, I believe. In Southern California, in most areas, they are two and one-half cents against the one cent differential for the dock sales.

ASSEMBLYMAN WILSON: Why would that differential be? Is it because they have proven themselves to be more economical?

MR. WEINLAND: I might say that's historical. It's been that way for any years and there have been very few requests to change that differential. In fact there has been very little cost data on the dock operation developed in those areas in recent years, in Southern California.

ASSEMBLYMAN WILSON: This Wendel Farms case, the first one, I suppose the second one too, both of them have had quite a serious effect, I suppose, on the interpretation the Department has had to make in these various areas, hasn't it?

MR. WEINLAND: There is no decision in the second Wendel Farms

case yet. The first Wendel Farms case, in order to get a specific price in the area, and some of these areas where it isn't covered, to cover the dock sale we have held hearings and specifically covered the dock sales at the retail store price. But those are all areas where there are no dock operations, other than the San Francisco area, where there is one dock operator. But up to the present time, he is not interested in a differential, and we've had no request for the establishment for a differential in that area.

ASSEMBLYMAN WILSON: Is there any inconsistency between the position of the Department and, what is it, the Misasi case and the Department's position in the Wendel Farms case?

MR. WEINLAND: I don't believe there is. The Misasi case does say, in the San Joaquin area, that this is a separate and distinct method of distribution. Now, in the Wendel Farms case, you don't have a price in effect. If your order doesn't specifically mention it, you do not have a price in effect. Now, in that area we do have a price in effect at one cent below the store price.

ASSEMBLYMAN WILSON: Did you then go in each of these areas where there was not a price in effect and put one in effect after the Wendel Farms case?

MR. WEINLAND: We started that, actually before the Wendel Farms case was filed. During the course of the Misasi case, in discussing all these matters with legal counsel, this question was raised: "Well if the defendants are right in this case, do you have a price in effect in these areas where the matter isn't specifically covered?" The answer was not clear to us. So we held hearings in areas where there was no problem, no dock operation, we proposed the retail store price just to be sure the matter was covered. Then the Wendel Farms decision followed that. That was the situation, if you'll note on

page 7, taking the first three areas listed, which came before the Wendel Farms case: Madera-Merced area, Marin County, Kern County, Shasta-Tehama. We did not go into those areas specifically for the dock situation, but as we were holding hearings we proposed it to fill that possible gap.

ASSEMBLYMAN WILSON: I have been wondering from the testimony this morning if maybe the Department shouldn't have been sponsoring this A.B. No. 2319 during this last session rather than the Milk Institute. Hasn't there been considerable unrest within the Department? (Mr. Porter says it would have saved a year in his life.) (Giggles.)

MR. WEINLAND: I don't know about unrest, but we've had a lot of problems.

ASSEMBLYMAN WILSON: The Department took little position on it. It seems to me your job might have been made easier. Apparently it was something that would have set up a stricter formula for you to go by.

MR. WEINLAND: I don't know if I can comment on that. Mr. Dick usually states the Department's position as to what position the Department should take. As I recall the hearing on 2319, we did suggest, and I recall Mr. Porter pointing it out, that our recommendation was some clarification would be helpful one way or another. We didn't take the position of one side or the other on 2319.

ASSEMBLYMAN WILSON: Like Mr. Britschgi and some of the others here, I suppose I am a little concerned about the bottom of page 10, where you say that you "believe Section 4360 could be made much clearer if it were amended to state specifically one of the basis upon which the Director of Agriculture may establish minimum prices

above or below costs would be that of maintaining reasonable stability in the distribution of milk in each marketing area". This word "stability" could be used very broadly, couldn't it? In other words, for whom are you going to maintain the stability?

MR. WEINLAND: For the industry as a whole. Not for any one particular group.

ASSEMBLYMAN WILSON: There again, you have distinct differences between different segments of the industry where it would be pretty hard to make a broad interpretation. We would probably have to define "stability", wouldn't we?

SENATOR BYRNE: Mr. Chairman, I'm thinking outloud now, but I am wondering if there is anything particularly sacred about the Milk Control Act, especially at the wholesale and retail level -- the distribution level. Go back to 1937, the method of packaging, the method of distribution and the progress we have made in the retail lines, the efficiency we have developed in transportation, the large milk trucks we use for distribution. It seems to me the only thing that remains primarily as it was when this original Milk Control Act was instigated is the fact that you have to have cows, and you have to feed them and you have to milk them. I think that will always be true. I don't know how you can improve on that. They have milking machines and they feed them, of course, your highly specialized foods. I am just wondering if we're not beating an old horse to death here in some of our approaches to this matter. Having sat here in the Legislature for nine years and seen this control -- this Act -- abused, I think in many cases, by the people for whom it's primarily established -- the industry, as I understand it, with very little thought to the consumer sometimes. Maybe our thinking should go back to the source of the milk itself and pretty much maintain our

regard or concern about the industry at that level. Because we have progressed in this merchandising field, and milk has certainly progressed as much or more than many other phases of it. That has been my concern for quite some time as to whether or not we're not trying to stand still in this operation, rather than progress and give the consumer a good product at a price that he can afford to pay. I don't know. Those are the thoughts that have been running through my mind for some time. I think we have to recognize progress in this line the same as anything else.

ASSEMBLYMAN PATTEE: I certainly agree with Senator Byrne. But I have another question too. I understand taking care of the welfare of the public is one of the reasons we originated the Desmond Act. Yet you have a plant dock, like the one in San Francisco. The plant docks have proven, after you have gone over their costs practically everywhere in the State, they can sell milk cheaper. Wouldn't you think it would be fair to the public to ask him for his costs? He must be making excess profits selling it at the same price as the retail store which is the reason he doesn't ask for it. Under this formula you are not thinking of the welfare of the public at all. You just say "hold the thing at the very top, and we'll let this fellow go on and make it". Why don't you ask for his costs, and maybe you can give the public a cheaper bottle of milk?

MR. WEINLAND: We could take his costs. That is correct, Mr. Pattee. If we did establish a minimum differential in that area he would not be obligated to sell at that minimum.

ASSEMBLYMAN PATTEE: He could sell up to the top of what you set for the store no matter what happens if he wants to. I'm taking the other side, maybe the man wants to sell at top price. Maybe he doesn't want a differential, because he's selling all the milk

he can handle. He's making more money this way. He's getting more for the milk, and yet, you're not going anything toward helping the public out.

SENATOR COBEY: Mr. Weinland, I'm just repeating what's been covered before, but as I understand the Bureau's interpretation of the law, since you interpret the law, you are permitted to deviate from the cost basis. You are permitted to set prices above cost where so doing is necessary, shall we say, to stabilize the milk distribution industry. It seems to me on that rather general standard, we in the Legislature have given you authority to pretty well determine how fast this dock method of distribution develops.

MR. WEINLAND: That's correct, and that is our interpretation. We have exercised that discretion in two areas, and we're in law suits right now challenging our authority to exercise that discretion.

SENATOR COBEY: So that's the reason why you would like to have at least your authority clarified?

MR. WEINLAND: Clarified. That's correct. We think it's there, that's true.

SENATOR MONTGOMERY: We've been talking about the consumer and the distributor. How about the producer -- the Young Act. Now you say that somebody sells milk cheaper, but the person that is really suffering is the producer. He should get more money for his milk. Now, are we going to discuss the Young Act along with the Desmond Act, or just the Desmond Act?

CHAIRMAN BELOTTI: Well, Senator, as I mentioned at the outset we are here to discuss and listen to the Department give us their reaction and interpretation of the recent court decisions on the Misasi case. But if you would like to bring up any other matter, Senator, it's perfectly all right to do so.

SENATOR MONTGOMERY: We know down in the valley that the producer is suffering. Historically he has been suffering all the time. Now what are we going to do about him? In fact, I don't think that milk retails at a high enough price in California. We are one of the lowest in the United States, and the producer is the one that is getting it in the neck. The middle man is making the money. Now, down in Kings County, they have allowed a twelve cents reduction. Leoni Brothers -- they have their own farm, and they are selling milk at twelve cents a gallon less than the store price. Is it all three cents a quart to the other plants in Kings County, or just Leoni?

MR. WEINLAND: I believe that's at the ranch -- the consumers sale at the ranch is, I believe two and a half cents a quart below the store price, or ten cents a gallon in that area.

SENATOR MONTGOMERY: They advertise, "save twelve cents".

MR. WEINLAND: That is probably off the retail store home delivery price. There's a half cent or a cent between the store price and the retail home delivery price, I believe.

SENATOR COBEY: Mr. Weinland, I would like to ask you about something which isn't the subject of this hearing. Where does the Bureau stand now on this; I may not use the proper terminology but I'll see whether you understand what I mean. This premium that was put on the excess Grade A milk that goes with a certain type of Grade B usage, which is my understanding in my own particular area, some distributors are complying with it and some are not. Do you know what I'm talking about:

MR. WEINLAND: Yes, I know what you are talking about.

SENATOR COBEY: Would you state it more accurately than I have?

MR. WEINLAND: I think you stated it accurately, Senator, but I'll enlarge on it. A month or two ago, following hearings, we

established a price for Class 2 market grade milk at 20 cents per hundred weight above the paying price of the manufacturing class. Now, Class 2 milk is milk used in cottage cheese, buttermilk, ice cream, condensed milk, and so forth. We've had complaints that some of the distributors are interested in obtaining this milk at the old price, or the price less than the 20 cents. Now our position is that on over contract milk if the producer is free to bargain for his over contract milk with some manufacturing plant to provide an outlet for it, then it goes as manufacturing milk. But if the distributor, with whom he has a contract, in any way controls that supply through his contract, with threats of "you better let me have it at the lower price, or I'll cut your contract off", or, now I am repeating complaints that we have received, and we have talked with many producers, and in some instances the producers feel that that is the situation. Our position is that if the distributor is controlling that milk through his contract, that it is regulated milk, and if it goes to a Class 2 usage, the plan price of milk prevails.

SENATOR COBEY: Now, it's my understanding that in Merced County, for example, that Foremost Dairies is voluntarily paying this and Borden's has refused to pay. Is that the fact or not?

MR. WEINLAND: We're right in the middle of that picture now. We'll have to make some audits to determine the actual facts.

SENATOR COBEY: That's what the complaints have been from the producers to me that have contracts with Borden's.

MR. WEINLAND: I've heard complaints to the contrary. That the situation is reversed, and we're endeavoring to obtain the facts.

SENATOR COBEY: Now, when you do obtain the facts, can you state at this time what action you propose to take?

MR. WEINLAND: If we determine it's regulated milk, we'll calcu-

late the amount owed and demand the distributor pay it. If he refuses to pay, then we have no recourse but a court action.

SENATOR COBEY: I see. Frankly, one reason I inquired was that when that order was issued there were a lot of producers that thought they were going to have some more money in their pockets, and that hope has not been realized, at least in some cases, and they are pretty disappointed about it.

MR. WEINLAND: We've heard lots of similar reports.

SENATOR COOMBS: In your opinion is the dairyman, or the producer, in distress all over the state financially?

MR. WEINLAND: No, in my opinion many, many of them are not in distress. The producer who does not have a favorable contract or outlets for his milk is in trouble. If a large percentage of his milk has to go to manufacturing plants at the manufacturing price, he is in serious trouble, but if he has a good contract ---.

SENATOR COOMBS: Well, he's the forgotten man, isn't he? You take care of all the rest, but you forget the fellow that produces the milk.

MR. WEINLAND: I couldn't agree with that statement, Senator.

SENATOR COBEY: As a matter of fact, am I correct in my understanding, Mr. Weinland, you don't keep, or do you, keep records of the financial conditions of the Grade B producers? You're concerned with Grade A pricing, aren't you?

MR. WEINLAND: With Grade A pricing only. We have no authorization to establish minimum prices for manufacturing grade milk.

SENATOR COBEY: Do you, so your statements with respect to the present economic condition of the milk producers in this state, does this apply to the Grade B producers?

MR. WEINLAND: No, it does not. I'm sorry. The Grade B

producer is in serious difficulties.

ASSEMBLYMAN BRITSCHGI: Mr. Weinland, on page ten, you have here this section, "at the present time the Director may establish minimum prices above or below the costs if he determines from credible evidence that the prices based strictly upon costs will not conform to and effectuate," and this is the question I have: "The legislative declarations, purposes and intent of this chapter," how broad does that put this picture?

MR. WEINLAND: That puts it pretty broad. You refer back to the legislative purposes and intent, and I think in Section 4204D you find reference to maintaining reasonable amount of ability and prosperity. Then there are several statements of destructive and demoralizing trade practices in the declared purposes of the Act. But in this section, which is the standard, one must refer back to these legislative declarations, purposes and intent, and they are stated pretty broadly.

ASSEMBLYMAN BRITSCHGI: Let me then ask you just this one question. They apparently were interested in the people in the business more than anybody else. I think that's the prime interest we have here. If that were true, do you know offhand how many milk distributing firms in the State of Oregon have gone out of business since they have taken off their price control?

MR. WEINLAND: No I don't, Mr. Britschgi.

ASSEMBLYMAN BRITSCHGI: I think that would be of interest to the Committee if we can ever find some information out from Oregon as to just what's happened up there, Mr. Chairman, since they have taken off their price control.

CHAIRMAN BELOTTI: Which they have done when?

ASSEMBLYMAN BRITSCHGI: Oh, two years, about a year and a half ago, I guess now.

CHAIRMAN BELOTTI: We'll contact the proper officials in the State of Oregon, and endeavor to get that information.

ASSEMBLYMAN BRITSCHGI: I'm just wondering about these few words in here. I don't know how far "declarations, purposes and intent" actually mean. I'm still worried about that.

CHAIRMAN BELOTTI: Any further questions? Mr. Weinland, in arriving at a cost and a price, do you consider the actual location of one of these dock retail sales outlets? In arriving at a price of what you would declare to be a reasonable price they should offer their milk for sale, do you take into consideration the actual location of a dock sales establishment?

MR. WEINLAND: I believe we have to a very limited extent since the information has come before us at some public hearings, and has been pointed out in one or two situations. For example, here's a dock operation right in the center of a shopping center. We are aware of that but whether that particular fact alone has had much bearing on the decision I would hesitate to say at this time. I don't recall that it has.

CHAIRMAN BELOTTI: It shouldn't. No, it shouldn't, but I am merely wondering what the attitude of the Department is when they get a request for a permit to establish ---

ASSEMBLYMAN WILSON: The theory behind any price differential is the cost of production, and that should be available whether they are next door to the super market or shopping center or any place else it happens to be.

CHAIRMAN BELOTTI: Well, it just seems to me, along the lines of Senator Paul Byrne's remarks here a moment ago, we actually have gone a long way since the establishment of the Act to protect the producer and the distributor. Now we are faced with the

situation that certainly is going to need a lot of legislative clarification, because the distributors, and the producers in a great many instances, are not happy with the way things are going, and sometimes I wonder if we would not be better off if we went back to the good old system of free enterprise and let everyone russle for themselves.

ASSEMBLYMAN BRITSCHGI: Mr. Chairman, could I just add one statement to that. I'm reading here from a memorandum from the Department that was sent to me after my hearing was held on a request for the dock price. It says that the facts and the evidence submitted are insufficient to justify, authorize or support any amendment to the minimum wholesale-retail prices established for San Mateo County. My same evidence, and I would like to get this into the record, was taken from a man sitting in the audience here that got his about a month before mine. My question is, how can it be insufficient in San Mateo County and good enough for San Joaquin County?

CHAIRMAN BELOTTI: Well, I think Mr. Weinland might be able to answer your question.

SENATOR COBEY: In referring to consumer prices for milk, just generally speaking, how do the prices as established in California compare with those throughtout the rest of the nation?

MR. WEINLAND: California prices for the most part are below the twenty-five city averages published by the United States Department of Agriculture in the area of a cent or a cent and a half below. I don't have the figures at the moment. Generally they run below the average for the twenty-five major cities in the United States published by the United States Department of Agriculture.

SENATOR COBEY: Throughout the United States as a whole, so far as milk prices are concerned, and again in this particular case, I'm talking about milk prices to the ultimate consumer, normally there

is a fixed price, or a set price, as against what I would call a free price, in a sense, of a price established by the law of supply and demand. In other words, what I'm getting at is, in the pattern outside of California generally speaking, that milk prices are established by your Federal marketing order.

MR. WEINLAND: At the producer level, that is correct. On the resale level, I think there are ten or eleven states that have resale pricing.

SENATOR COBEY: Then so far as the retail and resale price, California is part of a minority group in that respect. Is that right? You said ten or eleven or twelve states?

MR. WEINLAND: Of the number of states that do have resale pricing, California is one of ten or eleven that does have resale pricing.

SENATOR COBEY: Then your Federal marketing orders only operate on the producing level?

MR. WEINLAND: That is correct.

SENATOR COBEY: They have nothing in them that set the prices for retail or resale.

MR. WEINLAND: That is correct.

CHAIRMAN BELOTTI: Is that then the number of states, Mr. Weinland, that have controls on milk prices -- eleven or twelve states?

MR. WEINLAND: Eleven or twelve have the resale pricing. The wholesale and the consumer price. Most, or in a great portion of the United States, the dairy farmer's price is regulated by the United States Department of Agriculture under Federal order. I think there are approximately sixty-five of those Federal orders which establish the dairy farmer's price. The wholesale and retail consumer prices are set in approximately ten or eleven states.

CHAIRMAN BELOTTI: Are you familiar with the situation in our

neighboring State of Oregon where they have the controls and they decided to drop them?

MR. WEINLAND: Only to a very limited extent. I had a letter from the College of Agriculture up there outlining what has happened since the law was repealed. I can't recall all the facts. I do recall that immediately there was a drop in, I think chain store prices on the half gallon and some decrease on the dairy farmer's price. The dairy farmer's price has gradually come back to about where it was at the time the law was repealed. There were other things in that statement I can't recall at the moment.

SENATOR COBEY: The retail prices remained about the same?

MR. WEINLAND: They are higher now. Higher than they were before repeal up there. They dropped immediately when the law went out and the dairy farmer's price went down, and the retail prices increased faster than the dairy farmer's price came back up.

CHAIRMAN BELOTTI: The price to the producer did not increase in proportion to the retail price?

MR. WEINLAND: That is my recollection of the information supplied me.

SENATOR COBEY: Could we have a copy of that, unless it's confidential information; if it's all right with the Chairman, could it be furnished to the Assembly Committee and the Senate Agriculture Committee?

MR. WEINLAND: I will be happy to supply it.*

CHAIRMAN BELOTTI: Are there any further questions? Any comments? Mr. Weinland, is there anyone from your staff or do you have anything further you would like to offer to the Committees?

* (See Appendices to transcript).

MR. WEINLAND: I don't have anything further to offer, Mr. Belotti. Mr. Dick or Mr. Kuhrt, the deputy director and assistant director may have something, but I have no further comment.

CHAIRMAN BELOTTI: On behalf of the Senate Committee and the Assembly Committee, I certainly want to thank you for being here to present the testimony you have on behalf of your Department. I think you certainly deserve to be relieved now because you have been on the spot there for quite a few hours.

MR. DICK: I might make about two sets of comments, Mr. Chairman. One of them is in respect to this Oregon report Mr. Weinland was talking about. I think that was sometime during the last legislative session, and it might be possible to get even a later report. I think that the question should go beyond the question that Mr. Britschgi asked of how many distributors went out of business.

ASSEMBLYMAN BRITSCHGI: When I introduced my bill to repeal the Desmond Act, you must remember that it would never touch the Young Act and the farmer would never get anything less than he's getting right now. So we wouldn't have any problem with that. What we are interested in is the Desmond part of this act.

MR. DICK: I thought, Mr. Britschgi, that we should get the whole picture.

ASSEMBLYMAN BRITSCHGI: That's all right. I didn't want to come along and scare some of these people into thinking it was the purpose of taking the whole Act off, it was just taking half of it.

MR. DICK: I know that, but I was thinking of the consumers' standpoint that even if the producers price is not lowered, it's the consumer price that is outlined, and I think you want to take a look at that. The other comment that I might make and try to partially answer Mr. Wilson's question of a little earlier as to why

the Department didn't back A.B. 2319. I think that everybody is aware of the fact that this whole plant dock pricing thing is controversial, and there seem to be several different approaches that have come to mind so far. One of them is the approach of A.B. 2319, which would just plainly have said they sell at the grocery store price. Another approach is the approach that we interpret the present law to convey and that is the Director has some discretion in setting that differential below the differential in cost. But that point isn't clear as evidenced by these two suits that we are engaged in. The third approach is to fix the law so that it just makes us set it on costs and nothing else, which would probably increase these differentials in some areas to three or four cents. And the fourth approach is Mr. Britschgi's approach, and the one that Senator Byrne has just discussed of repealing the Desmond Act, in which case we wouldn't have anything to say about it. So there are actually about four different approaches to the thing. Now that we have suggested in Mr. Weinland's statement that inasmuch as the Legislature appears to have up to now followed the approach of giving the Department some latitude, and that if you want us to continue on that basis, we suggest that you even further clarify the fact that we have that latitude, and that's been our position.

CHAIRMAN BELOTTI: Thank you, Mr. Dick. If there is nothing further, I want to thank everyone for participating and making this meeting what I consider a real success. The meeting is adjourned.

TIME: 12 NOON.

STATE OF CALIFORNIA
DEPARTMENT OF AGRICULTURE
Sacramento
September 21, 1959

Honorable Frank P. Belotti, Chairman
Assembly Interim Committee on Livestock
and Dairies
State Capitol
Sacramento, California

Dear Mr. Belotti

As requested by your Committee, we are enclosing a copy of a letter, dated June 4, 1959, from S. Kent Christensen, Associate Professor of Marketing, Oregon State College, outlining conditions in the Oregon milk industry following repeal of the Milk Marketing Act.

We have asked Dr. Christensen to furnish us information as to any further developments since June 4. In the meantime, we are supplying you the copy of his earlier report.

Very sincerely yours
/s/ Chas. V. Dick

Chas. V. Dick
Deputy Director

CVD MJ
Enclosure

OREGON STATE COLLEGE
School of Agriculture
Corvallis, Oregon

June 4, 1959

Mr. D. A. Weinland
Chief, Bureau of Milk Control
State of California Department
of Agriculture
Sacramento 14, California

Dear Mr. Weinland:

Your letter of May 27, with reference to your memorandum to Charles V. Dick on conditions in the Oregon milk industry following repeal of the Milk Marketing Act, has been received. Both Mr. Mumford and I appreciate your courtesy in sending us this memorandum and in giving us an opportunity to offer some comments. We well understand the difficulty of summarizing someone else's opinions relative to a subject as controversial as milk control.

After conferring with various people here in the Department, we decided it might be best to redraft a statement to make somewhat more clear some of the details that we expressed to you on the phone. We would suggest the following:

In a telephone conversation with Professors D. C. Mumford and S. Kent Christensen of the Department of Agricultural Economics at Oregon State College, I inquired about conditions in the milk industry in Oregon following repeal of the Oregon Milk Marketing Act in November 1954. Although no formal studies have been made nor any publications issued on this subject, I was able to get the following general impressions:

1. Prior to repeal of the Oregon Milk Marketing Act there was no store differential (a lower price at the store than the price charged on home delivery routes).
2. The day after the repeal of the Act, Portland consumers began to get a store differential which the voters had been promised. This practice spread rapidly.
3. The price received by dairy farmers shipping to the Portland market was lowered almost immediately 1 cent per quart or 46 cents per hundredweight on 3.5% milk. Since then there have been three important upward revisions and two important downward revisions until at the present time, June, 1959, the dealers' buying price for 3.5% Grade A milk in Portland is almost exactly the

same as it was prior to repeal of the Act. This is true in spite of the fact that we estimate the present cost of producing Grade A milk in the Willamette Valley to be about 6% higher now than just before the Milk Marketing Act was repealed.

4. Consumer retail prices in Portland have increased substantially since repeal of the Act. They are now higher than they ever were under the Milk Marketing Act. Today, as you can see from the latest copy of the Fluid Milk and Cream Report, milk in the stores sells for 23 cents per quart (multiple quarts, 22½ cents). Under home delivery prices there are volume discounts, so that a customer who takes 90 or more quarts per month gets it for 23 cents per quart. (In all fairness, it should be pointed out that the cost of distributing milk has gone up in most markets. In a recent speech by the Secretary of Agriculture, he pointed out that in the United States the cost of marketing a quart of milk has gone up from 9.5 cents to 14 cents -- an increase of nearly 50% in the last ten years. He states that the major reason for this increase has been the increase in labor costs.)
5. For a period of time after repeal of the Act, there was a high degree of stability in milk prices in the Portland market. Within the past year, however, a considerable amount of instability has developed. This has shown up in the form of secret discounts to large accounts; in the granting of substantial loans to food retailers; and in substantial discounts on by-products such as cottage cheese sold to wholesalers. The end result has been to pass back to the producer at least part of the discount.
6. Under the Milk Marketing Act we had a market-wide pool for each of the important markets. As a result, all producers in a given market got the same base price. Since repeal of the Act, prices paid to different producer groups have differed somewhat because of differences in utilization in individual plants. Due to the fact that we have not had a large amount of surplus milk, these differences have not been great relative to other markets where a considerable amount of surplus fluid milk exists.
7. With the discontinuance of the Act, of course all auditing was discontinued and in turn we also lost the basic source of statistical information which, up to that point, had been extremely

valuable to the industry and to the College. However, after about two years the producers were able to push through a milk audit law for the purpose of auditing distributors' books to determine whether or not producers have been paid in accordance with the usage of the milk and the terms of the contract between producers and distributors.

8. From time to time there has been some talk about investigating a federal order. However, the industry is generally not ready to seek an order, and it is our opinion that unless the unfair practices become more widespread and instability of milk prices become much greater, the producers will not seek a federal order.

Sincerely yours,

/s/ S. Kent Christensen

S. Kent Christensen
Associate Professor of Marketing

SKC:ig

cc: D. C. Mumford
Oscar Hagg

AIR MAIL

- ~~second copy received~~ L500 California. Legislature. Assembly. Interim Committee on Judiciary.
~~J8t~~ Transcript of proceedings, Subcommittee on Long Beach tidelands [grant
1955 of tidelands, San Diego and Long Beach, AB 3762] Long Beach,
no.1 December 9 and 10, 1955.
215 p. (processed)
- L500 California. Legislature. Assembly. Interim Committee on Judiciary.
~~J8t~~ Hearing, Subcommittee on Tidelands, Buena Park, October 1 [and 2] 1958.
1958 493 p. (processed)
- ~~no.1 c.2~~ L500 California. Legislature. Assembly. Interim Committee on Judiciary.
~~J8t~~ Hearing, Subcommittee on Tidelands [inquiry into oil leasing practices
1958 of City of Los Angeles, on tidelands and other lands] Los Angeles,
no.2 January 23, 1958.
c.2 374 p. (processed)
- L500 California. Legislature. Senate. Fact Finding Committee on Judiciary.
~~J81~~ [Hearing] Subcommittee on Adoption, Los Angeles, December 5 and 6, 1961.
1961 390 p.
- ~~no.1 c.2~~ L500 California. Legislature. Assembly. Interim Committee on Judiciary-Civil.
~~J82~~ Hearings [of the] Subcommittee on Court Personnel. November 18 19, 1959,
1959 Sacramento.
no.1 9 p. (processed)
- L500 California. Legislature. Assembly. Interim Committee on Judiciary-Civil.
~~J82~~ Hearing on 1961 legislative program of the California Law Revision
1960 Commission; summary of proceedings, Sacramento, California, December 1-2,
no.3 1960. [1961?] 34 p. (processed)
- L500 California. Legislature. Assembly. Interim Committee on Judiciary-Civil.
~~J82~~ Hearing on prepaid service contracts on health and dance studios,
1960 transcript of proceedings, Stockton, California, May 19 and 20, 1960.
no.4 [1960?] 235 p. (processed)
- fL500 California. Legislature. Senate. Fact Finding Committee on Labor and
L28 Welfare.
1960 Hearing held in El Centro [prepared statements] January 15, 1960.
no.1a 1 v. (various pagings) 169 p.
- L500 California. Legislature. Senate. Fact Finding Committee on Labor and
L28 Welfare.
1960 Public hearing [prepared statements] Fresno, January 26, 27, 28, 1960.
no.2a 2 v. (various pagings) (169, 508 p.)
- L500 California. Legislature. Assembly. Committee on Legislative Representation.
~~L42~~ Transcript of proceedings, San Francisco, Jan. 21, 1958.
1958 110 p. (processed)
- ~~no.1 c.2~~ L500 California. Legislature. Assembly. Interim Committee on Livestock and
L5 Dairies.
1959 Transcript of proceedings; Assembly Interim Committee on Livestock and
no.1 Dairies and Senate Fact Finding Committee on Agriculture. Sacramento,
c.2 September 4, 1959. 43 p. (processed)

- L500 California. Legislature. Assembly. Interim Committee on Livestock and
L5 Dairies.
- 1960 Transcript of proceedings, edited, Assembly Interim Committee on Livestock
no.5 and Dairies and Senate Fact-Finding Committee on Agriculture, Fresno,
c.2 June 29, 1960.
119 p. (processed)
- L500 California. Legislature. Assembly. Interim Committee on Manufacturing,
M4 Oil and Mining Industry.
1956 Transcript of proceedings; hearing on agricultural minerals, Sacramento,
no.1 December 14, 1956.
c.2 39 p. (processed)
- L500 California. Legislature. Assembly. Interim Committee on Manufacturing,
M4 Oil and Mining Industry.
1957 Subsidence, transcript of proceedings, Los Angeles, California,
no.11 December 9-10, 1957. [1958?]
c.2 206 p. Illus.
- L500 California. Legislature. Assembly. Interim Committee on Municipal and
M8 County Government.
1954 Transcript of proceedings, Subcommittee on Annexation and Related
no.1 Problems, Los Angeles, October 21, 1954.
c.2 172 p. (processed)
- L500 California. Legislature. Assembly. Interim Committee on Municipal and
M8 County Government.
1956 Proposed change from fiscal to calendar year; transcript of proceedings,
no.1 meeting of the Assembly Interim Committee on Municipal and County
c.2 Government, Los Angeles, California, September 25, 1956. 1956.
138 l.
- L500 California. Legislature. Assembly. Interim Committee on Municipal and
M8 County Government.
1958 Transcript of proceedings; incorporations, San Jose, August 8, 1958.
no.5 c.2 153 p. (processed)
- L500 California. Legislature. Assembly. Interim Committee on Municipal and
M8 County Government.
1960 Transcript of proceedings; annexation and related incorporation problems,
no.4 Palm Springs, California, November 17, 1960.
c.2 77 p. (processed)
- L500 California. Legislature. Assembly. Interim Committee on Municipal and
M8 County Government.
1960 Transcript of proceedings; annexation and related incorporation problems,
no.5 San Diego, January 14-15, 1960.
c.2 1 v. (processed) 159 p.